

OPEN MEETING ITEM

COMMISSIONERS
KRISTIN K. MAYES – Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



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EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION

ORIGINAL

DATE: APRIL 27, 2010
DOCKET NO.: S-20605A-08-0377

Arizona Corporation Commission

DOCKETED

APR 27 2010

TO ALL PARTIES:



Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

RICHARD BRADFORD AND
CINDY BRADFORD AKA CINDY WHITE
(RECONSIDERATION OF DECISION NO. 70544)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MAY 6, 2010

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MAY 13, 2010

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF:

9 RICHARD BRADFORD (CRD #2706290)
10 and CINDY BRADFORD (a.k.a. Cindy White),
11 husband and wife,

12 Respondents.

DOCKET NO. S-20605A-08-0377

DECISION NO. _____

OPINION AND ORDER

13 DATE OF STATUS CONFERENCE: September 4, 2008

14 DATE OF PROCEDURAL CONFERENCE: April 7, 2009

15 DATE OF HEARING: July 7, 2009

16 PLACE OF HEARING: Phoenix, Arizona

17 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

18 APPEARANCES: Ms. Cindy L. White, *in propria persona*; and

19 Mr. Phong (Paul) Huynh, Staff Attorney on
20 behalf of the Securities Division of the Arizona
21 Corporation Commission.

22 **BY THE COMMISSION:**

23 On July 23, 2008, the Securities Division ("Division") of the Arizona Corporation
24 Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Richard
25 Bradford and Cindy Bradford White (aka Cindy White), husband and wife (collectively
26 "Respondents")¹, in which the Division alleged Mr. Bradford had committed multiple violations of
27 the Arizona Securities Act ("Act") and the Investment Management Act ("IM Act") in connection
28 with the offer and sale of securities in the form of investment contracts. Hereafter, Ms. White may be
referred to as "Respondent Spouse" and was joined in this action pursuant to A.R.S. § 44-2031(C)

¹ Prior to the Notice being filed in this proceeding, on December 18, 2007, Mr. Bradford filed a Petition for Dissolution of Marriage from Mrs. Bradford. Their marriage was dissolved on March 3, 2008, by the Maricopa County Superior Court at which time Mrs. Bradford was restored to her former name of White.

1 solely for purposes for determining the liability of the marital community.

2 Respondents were duly served with copies of the Notice.

3 On August 6, 2008, Respondent Spouse filed a letter in the docket indicating that she had
4 been divorced from Respondent Richard Bradford on March 3, 2008. Ms. White did not request a
5 hearing in her letter.

6 Mr. Bradford did not request a hearing.

7 On August 11, 2008, by Procedural Order, in order to determine Ms. White's intentions in the
8 matter, a status conference was scheduled on September 4, 2008.

9 On September 4, 2008, a status conference was held to determine the status of the proceeding.
10 The Division appeared with counsel and Ms. White appeared on her own behalf. The proceeding was
11 recessed for further discussions between the Division and Ms. White.

12 On October 8, 2008, the Commission issued Decision Nos. 70544 and 70545, a Consent
13 Order involving Ms. White and a Default Order involving Mr. Bradford, respectively.

14 On February 23, 2009, Ms. White filed a letter with the Commission stating that she was a
15 victim of this proceeding and that she wanted Decision No. 70544 dismissed.

16 On March 4, 2009, Ms. White filed a letter requesting that the Commission reconsider
17 Decision No. 70544 with respect to her Consent Order. She further indicated she wished to request a
18 hearing.

19 On March 19, 2009, the Division filed a Motion to schedule a procedural conference to
20 discuss the possible reconsideration of Decision No. 70544.

21 On March 20, 2009, by Procedural Order, a procedural conference was scheduled to
22 determine the status of the proceeding.

23 On April 7, 2009, a procedural conference was convened with the Division represented by
24 counsel and Ms. White appeared on her own behalf. The Division and Ms. White discussed the
25 nature of the reconsideration of Decision No. 70544. Ms. White further requested that a hearing be
26 scheduled if the matter was not resolved in the interim.

27 On April 8, 2009, by Procedural Order, a hearing was scheduled on July 7, 2009, with respect
28 to the reconsideration of Decision No. 70544.

1 On July 7, 2009, a full public hearing was convened before a duly authorized Administrative
 2 Law Judge of the Commission at its offices in Phoenix, Arizona. The Division was present with
 3 counsel and Ms. White appeared on her own behalf. At the conclusion of the proceeding, the matter
 4 was taken under advisement pending the submission of a Recommended Opinion and Order to the
 5 Commission. The parties agreed that any closing briefs be filed by August 31, 2009.

6 On August 28, 2009, the Division filed a Motion to extend the time for filing its brief until
 7 September 21, 2009.

8 On August 31, 2009, during a teleconference with the Division's attorney and Ms. White it
 9 was agreed that the Division would make its filing by September 30, 2009, and Ms. White would
 10 have until October 30, 2009, to file her response, if she wished to do so. By Procedural Order, the
 11 Division's Motion for an extension for the filing of its closing brief on September 30, 2009, was
 12 granted and Ms. White was afforded a similar extension until October 30, 2009, to file her response.

13 On September 23, 2009, the Division filed its closing brief.

14 On October 28, 2009, an attorney for Ms. White filed a Motion to Extend Deadline for
 15 Answering Brief until November 16, 2009, since he had been retained only recently. In the Motion
 16 counsel for Ms. White indicated that the Division did not object his request for a brief extension.

17 On October 29, 2009, by Procedural Order, counsel for Ms. White was granted until
 18 November 16, 2009, to file a response to the Division's closing brief.

19 On November 16, 2009, a closing brief was filed on behalf of Ms. White.

20 * * * * *

21 Having considered the entire record herein and being fully advised in the premises, the
 22 Commission finds, concludes, and orders that:

23 **FINDINGS OF FACT**

24 1. Ms. White is an individual who, at all relevant times herein, was a resident of
 25 Maricopa County, Arizona.

26 2. On March 3, 2008, pursuant to a Consent Decree of Dissolution of Marriage
 27 ("Decree"), Ms. White was divorced from Mr. Bradford in case No. FM2007-092470 in the Maricopa
 28

1 County Superior Court. (Ex. R-10)

2 3. Under the terms of the Superior Court Decree, it is stated as follows:

3 Husband shall pay and assume sole responsibility for, and shall indemnify and
4 hold Wife harmless from the following debts:

- 5 a. All debts incurred by husband alone, to specifically include: Barracuda
6 Group, LLC; and Fishing Partners-Salmon, LLC.
7 b. All credit card debt in husband's name alone to specifically include
8 cards with Wells Fargo, Household Bank and First Premier Bank.
9 c. All debt associated with Husband's business which includes but not
10 limited to the American Express credit card.

11 4. Under the terms of the Decree, Ms. White was to pay and assume sole responsibility
12 for all debts incurred by her alone, all credit card debt in her name alone and any debt associated with
13 her automobile. (Ex. R-10)

14 5. On July 23, 2008, the Division filed a Notice against Richard and Cindy Bradford in
15 which the Division alleged multiple violations of the Act with respect to the offer and sale of
16 securities in the form of investment contracts. In the Notice, it was alleged that the offer and sales
17 activities had been conducted solely by Mr. Bradford, and it was further alleged that Respondent
18 Spouse had been joined in the proceeding pursuant to A.R.S. § 44-2031(C) solely for purposes of
19 determining the liability of the marital community.

20 6. Respondents were duly served with copies of the Notice.

21 7. Respondent Richard Bradford did not request a hearing.

22 8. On August 6, 2008, Ms. White filed a letter in the docket indicating that she had been
23 divorced from Respondent Bradford on March 3, 2008. Ms. White did not request a hearing in her
24 letter.

25 9. On August 11, 2008, by Procedural Order, a status conference was scheduled in order
26 to determine whether Ms. White had intended to request a hearing.

27 10. On September 4, 2008, the Division appeared with counsel and Ms. White appeared
28 on her own behalf at the status conference to determine whether she wished to proceed with a hearing
or to pursue a solution to the proceeding in another manner. Subsequently, the proceeding was
recessed for further discussions between the Division and Ms. White.

1 11. On October 8, 2008, the Commission issued Decision Nos. 70544 and 70545, a
2 Consent Order involving Ms. White and a Default Order involving Mr. Bradford, respectively. In
3 both Commission Orders, the marital community was held liable for Mr. Bradford's violations of the
4 Act and the IM Act.

5 12. On February 23, 2009, Ms. White filed a letter with the Commission in which she
6 stated she was a victim of the proceeding and she requested Decision No. 70544 be dismissed. She
7 stated that she had believed that by signing the Consent Order she would be granted immunity from
8 any liability as a result of the proceeding. She further indicated she had helped in the investigation of
9 Mr. Bradford by calling the police and cooperating with the Division.

10 13. On March 4, 2009, Ms. White filed a letter and requested that the Commission
11 reconsider Decision No. 70544 with respect to her Consent Order and further requested a hearing.

12 14. Subsequently, a hearing was held pursuant to Ms. White's request.

13 15. The Notice alleged that from on or about March 1, 2006, through November 30, 2007,
14 Mr. Bradford had offered and sold unregistered securities in the form of investment contracts within
15 or from Arizona. During that time, Mr. Bradford and Ms. White were married.²

16 16. With the issuance of Decision No. 70545 (a Default Order), with respect to Mr.
17 Bradford, the Commission made specific findings and concluded that he had violated both the Act
18 and the IM Act with the fraudulent offer and sale of unregistered securities as an unregistered dealer
19 or salesman and that he had not been registered as either an Investment Advisor or an Investment
20 Advisor Representative. Additionally, the Commission found and concluded that beginning on or
21 about March 1, 2006, six investors had invested with Mr. Bradford in a "Hedge Fund" which he had
22 operated which was called Fishing Partners-Salmon, LLC ("FPS") and that the investors had invested
23 at least \$1,298,416 based on Mr. Bradford's fraudulent representations guaranteeing the investments
24 and promising returns of at least 20 percent.

25 17. Further, in Decision No. 70545, the Commission found that Mr. Bradford was acting
26 for his own benefit and for the benefit and in furtherance of the marital community and further
27

28 ² According to the Decree of Mr. Bradford and Ms. White, they were married in Las Vegas, Nevada on February 14, 2003. (Ex. R-10)

1 concluded that the marital community was bound pursuant to A.R.S. §§ 25-214 and 25-215.

2 18. The Commission, in Decision No. 70545, ordered Mr. Bradford to cease and desist
3 from his violations of the Act and the IM Act now and in the future and ordered him to pay restitution
4 in the amount of \$1,298,416, plus interest at the rate of 10 percent per annum from the date of the
5 investment. The Commission further ordered Mr. Bradford to pay administrative penalties in the
6 amount of \$100,000 which amount also accrued interest at a rate of 10 percent.

7 19. In issuing Decision No. 70544 with respect to Ms. White, the Commission found that
8 she was joined in the action pursuant to A.R.S. §§ 44-2031(C) and 44-3291(C) solely for purposes of
9 determining the liability of the marital community. Decision No. 70544 further found that Mr.
10 Bradford had been acting for his own benefit and for the benefit and in furtherance of the marital
11 community citing the Commission's Decision No. 70545 against Mr. Bradford and the Commission's
12 Order for him to pay restitution and administrative penalties pursuant to law.

13 20. The Commission further concluded that Mr. Bradford's conduct bound the marital
14 community pursuant to A.R.S. §§ 25-214 and 24-215.

15 21. Based on the Commission's Findings, Conclusions of Law, and Ms. White's consent
16 to the entry of the Commission's Order in Decision No. 70544, the Commission ordered the marital
17 community held liable as a result of Mr. Bradford's violations of the Act and the IM Act ordering
18 Respondent Spouse to jointly and severally pay, with Mr. Bradford, restitution in the amount of
19 \$1,298,416 and also pay an administrative penalty in the amount of \$100,000.

20 22. At the hearing in July, to explain the Division's position with respect to the liability of
21 the Respondents' marital community arising from Mr. Bradford's violations of the Act, the Division
22 called as witnesses, Mr. Ronald Baran, a special investigator with the Division, and Mr. John Fink,
23 Chief Accountant of Enforcement who qualified to testify as an expert witness. The Division also
24 caused a subpoena to issue to Ms. White to question her during the proceeding.

25 23. Mr. Baran described Mr. Bradford's formation of FPS and his opening a trading
26 account at Scottrade, an on-line brokerage firm, where Mr. Bradford, as the managing member of
27 FPS, would trade in investments for the fund on behalf of its members. (Tr. at p. 25-26)

28 24. Mr. Baran described the FPS trading activities which occurred between March 2006

1 and November 2007 and were conducted by Mr. Bradford.

2 25. As part of Mr. Baran's investigation, he subpoenaed records from Wells Fargo Bank
3 and also obtained the records of Scottrade and Chase Bank. According to Scottrade records, Mr.
4 Bradford was the sole signatory on the Scottrade checking account.

5 26. While testifying, Mr. Baran read into the record a portion of Mr. Bradford's
6 examination under oath ("EUO") where Mr. Bradford had identified a check from the FPS Scottrade
7 account number 1020, in the amount of \$7,269 which he had written to IndyMac Bank for a rental
8 payment on a home on Pinnacle Hills in Mesa, Arizona where he had lived with Respondent Spouse
9 when they were married. (Tr. at p. 49-50) (Ex. S-5)

10 27. During Mr. Bradford's EUO, he testified that he had written a check to Respondent
11 Spouse from the FPS Scottrade account in the name of Cindy Bradford for \$6,000 purportedly for tax
12 planning. (Tr. at p. 51) (Ex. S-5)

13 28. Further during Mr. Bradford's EUO, Mr. Bradford identified a check in the amount of
14 \$2,000 from the Scottrade account which had been used to pay a firm to decorate an office in the
15 residence on Pinnacle Hills where Mr. Bradford and Respondent Spouse had resided. (Tr. at p. 52)
16 (Ex. S-5)

17 29. While testifying during his EUO, Mr. Bradford indicated that he had deposited monies
18 from the Scottrade account into his personal checking account at Wells Fargo and transferred a
19 portion of these funds electronically to Respondent Spouse. (Tr. at p. 53) (Ex. S-5)

20 30. According to Mr. Baran, investors told him that the funds which Mr. Bradford
21 received from them were only to be used for investment purposes. (Tr. at p. 53)

22 31. Based on the record, it was established that on September 5, 2007, Mr. Bradford wrote
23 an FPS check from the Scottrade account to Respondent Spouse, in the amount of \$11,000.
24 Subsequently, Respondent Spouse deposited it, and on September 24, 2007, wrote a check for
25 \$10,000 which was applied as an earnest money payment on the house which they had been renting,
26 at 3963 N. Pinnacle Hills in Mesa, Arizona from her personal Wells Fargo account. At the time,
27 Respondent Spouse and Mr. Bradford were in the process of purchasing the home in the name of
28 Barracuda Group, LLC ("Barracuda"), which was purportedly another hedge fund established in

1 January 2005 by Mr. Bradford, according to Commission records. (Ex. R-11)

2 32. Based on Mr. Baran's investigation, he determined that Mr. Bradford was paying for
3 personal living expenses from the FPS account at Scottrade. (Tr. at p. 73)

4 33. As the Division's accounting expert, Mr. Fink reviewed the financial records
5 pertaining to FPS, its Scottrade account and also the records pertaining to the personal bank accounts
6 of Mr. Bradford and Respondent Spouse at Wells Fargo Bank. (Tr. at p. 80)

7 34. The Division's accountant reviewed one personal account for Mr. Bradford and two
8 accounts for Respondent Spouse in the name of Cindy Bradford, one for checking and one for
9 savings, for the relevant timeframe of March 2006 through November 2007. (Tr. at p. 80)

10 35. Mr. Fink referred to Exhibit S-9 which he had prepared to analyze the flow of investor
11 funds through the Scottrade account of FPS to determine the sources for the deposits that were made
12 into the personal bank accounts of Mr. Bradford and Respondent Spouse. According to Mr. Fink, he
13 found that there were six investors in Mr. Bradford's FPS fund which had been established at
14 Scottrade. The total amount received from investors amounted to \$1,298,416 and represented 100
15 percent of the amount deposited into the account. (Tr. at p. 82)

16 36. Mr. Fink testified that there were specific disbursements from the FPS Scottrade
17 account totaling \$174,525 to Mr. Bradford and that Mr. Bradford signed and made out four FPS
18 checks to Respondent Spouse totaling \$21,200. (Tr. at p. 83)

19 37. Additionally, Mr. Fink verified that two payments from the FPS account totaling
20 \$9,384 were related to the rental of the home on Pinnacle Hills in Mesa where Mr. Bradford and
21 Respondent Spouse had resided and that one check was for \$2,000 and made payable to an interior
22 design firm for a home office. (Tr. at p. 83 and 84)

23 38. Mr. Fink's analysis established that Mr. Bradford had disbursed \$297,109 by check
24 from the FPS account and that Mr. Bradford lost \$1,001,243 due to his trading activities conducted in
25 the account with Scottrade. As of November 30, 2007, the remaining balance in the FPS Scottrade
26 account was \$64. (Tr. at p. 84)

27 39. Mr. Fink testified that his analysis of Mr. Bradford's Wells Fargo account during the
28 relevant timeframe showed total deposits into the account of \$234,652, of which sum \$174,525 came

1 from the FPS account at Scottrade, along with another \$15,000 from three of the investors who paid
2 Mr. Bradford entry fees representing a two percent fee of their investments to join the fund. (Tr. at p.
3 85)

4 40. Mr. Fink's analysis also reflected the fact that a deposit of \$6,000 from Respondent
5 Spouse was also made into Mr. Bradford's personal checking account at Wells Fargo during the
6 relevant timeframe. (Tr. at p. 87)

7 41. Mr. Fink testified further that Respondent Spouse's Wells Fargo account had deposits
8 made to it by Mr. Bradford totaling \$34,820 and checks were deposited into this account from the
9 FPS account totaling \$21,200 signed by Mr. Bradford during the relevant timeframe. (Tr. at p. 87)
10 These deposits totaled over 70 percent of the deposits made into Respondent Spouse's Wells Fargo
11 checking account during this period. (Tr. at p. 88)

12 42. Further, during the relevant timeframe, Mr. Fink stated that monies were commingled
13 among all three accounts - the two Wells Fargo checking accounts and the FPS account. (Tr. at p. 89)

14 43. Additionally, Mr. Fink stated that if an individual check contained a memo he noted it
15 in his analysis reflecting what the memo and/or on-line transfer indicated such as "groceries" or "pay
16 my credit cards." (Tr. at p. 91)

17 44. Mr. Fink further testified that Mr. Bradford's personal account was utilized to pay
18 such items as the house rental, payments for groceries, and various other expenses such as the
19 transfers which Mr. Bradford had made to Respondent Spouse's checking account. (Tr. at p. 92)

20 45. Mr. Fink also noted that Respondent Spouse used her checking account for payments
21 of a similar nature to Mr. Bradford's, making payments for auto insurance, groceries, restaurants, a
22 number of retail establishments and auto fuel. (Tr. at p. 94)

23 46. In concluding his testimony, Mr. Fink described a restitution analysis which he had
24 prepared based on the six investors in Mr. Bradford's FPS fund that had been invested at Scottrade
25 totaling \$1,298,416. He noted that one investor, Allen Powell, had been repaid \$70,000, so that the
26 net amount of restitution which is due investors was determined to be \$1,228,416. (Tr. at p. 95) (Ex.
27 S-10)

28 47. Testifying further, Mr. Fink described how an early investor who had invested

1 \$250,000 in March 2006 in the FPS fund received a partial repayment of \$70,000 in August 2007
2 from Mr. Bradford who utilized the funds of a later investor who had just invested \$250,000 in FPS
3 five days earlier. (Tr. at p. 108)

4 48. Respondent Spouse testified that although Mr. Bradford wrote one check to her from
5 the FPS Scottrade account for \$1,800 with a memo for "accting" and another FPS check was written
6 to her for \$6,000 with a memo for "tax planning," she did not have any accounting or tax planning
7 degrees or experience in either area. (Tr. at p. 117 and 118)

8 49. Respondent Spouse further testified that when she sold a house in 2005 which she had
9 owned prior to her marriage with Mr. Bradford and made a \$76,000 profit, she wrote a check to Mr.
10 Bradford on May 31, 2005, for \$42,000 for as she stated, "because we were starting the Barracuda
11 Group, LLC." (Tr. at p. 120)

12 50. According to Respondent Spouse, in 2006 Mr. Bradford had been working at Allied
13 Mortgage and earned \$3,000. Subsequently, he formed FPS as a way to make a living and money for
14 their retirement. (Tr. at p. 122)

15 51. Respondent Spouse maintained that she was making enough money in 2006 to pay
16 both her and Mr. Bradford's bills and she did not know whether he was drawing any money from
17 FPS. (Tr. at p. 123)

18 52. According to Respondent spouse, during 2006 she made approximately \$31,000
19 selling software. (Tr. at p. 126)

20 53. Respondent Spouse testified that while Mr. Bradford told her that he was working
21 with T. Boone Pickens in the Marlin Fund while working to develop FPS in 2006, he really was not
22 working with Mr. Pickens. (Tr. at p. 126)

23 54. While testifying, Respondent Spouse acknowledged that she had received checks
24 written on the FPS account. (Tr. at p. 127)

25 55. Subsequently, Respondent Spouse admitted that aside from the FPS check for \$11,000
26 which was used by her to pay the \$10,000 down payment on the home in Mesa, the balance of the
27 FPS checks totaling \$21,200 were deposited into her Wells Fargo checking account to pay other bills
28 and regular expenses. (Tr. at p. 128)

1 56. Respondent Spouse stated that during the balance of 2006 and 2007 she resided with
2 Mr. Bradford on North Port Drive in Gilbert in a condominium which they rented for \$950 a month.
3 (Tr. at p. 129)

4 57. When Respondent spouse and Mr. Bradford moved into the home on Pinnacle Hills in
5 Mesa in mid-October 2007, she testified that Mr. Bradford had been telling the investors in FPS and
6 her that he was traveling to Texas when, in fact, he was living with another woman, Vivian Harper,³
7 “at 93 W. Kiowa,” and “was really living two lives.” Respondent Spouse first learned of Mr.
8 Bradford’s double life on November 26, 2007, during a phone call with Ms. Harper. (Tr. at p. 131)

9 58. Respondent Spouse testified that Ms. Harper told her that she was Mr. Bradford’s
10 girlfriend, and that he had been living with her for a year and a half. (Tr. at p. 143)

11 59. At that point, Respondent Spouse “realized that there was no T. Boone Pickens... and
12 no money” and she had to move out of the house on Pinnacle Hills in Mesa in three days. (Tr. at p.
13 143)⁴

14 60. Respondent Spouse testified that she is requesting that the Commission set aside
15 Decision No. 70544 and to find that the marital community is not liable for the violations of the Act
16 and IM Act committed by Mr. Bradford as found by the Commission in Decision No. 70545. She
17 argues that, pursuant to the Decree, Mr. Bradford is to pay and assume sole responsibility for and
18 indemnify and hold her harmless from all debts incurred by him alone which specifically included
19 Barracuda and FPS.

20 61. Respondent Spouse cited A.R.S. § 44-2031(C) arguing that the Commission is not
21 required to join the spouse but could use its discretion to decide whether to join a spouse in an action
22 for alleged violations of the Act.⁵

23 62. According to Respondent Spouse, she gave Mr. Bradford approximately \$125,000
24 between 2005 and 2007, and when Mr. Bradford gave her money, she believed that he was returning
25 her own funds to her. (Tr. at p. 140)

26 _____
27 ³ Mr. Bradford had also written an FPS check in the amount of \$20,000 to Ms. Harper during the relevant timeframe.

28 ⁴ Shortly thereafter, Respondent Spouse contacted the police about Mr. Bradford’s unlawful actions turning over his laptop and cooperating during the investigation by the Division.

⁵ Respondent did not reference the relevant section of the IM Act, A.R.S. § 44-3291(C).

1 63. Respondent Spouse admitted that she did not perform any work for FPS and did not
2 question Mr. Bradford when given checks by him from the FPS account because she trusted him and
3 he told her that he was transferring money from Barracuda to "here and there." (Tr. at p. 142)

4 64. Respondent Spouse called an additional witness in the proceeding, Ms. Vivian Harper.
5 Ms. Harper confirmed that she had identified herself to Respondent Spouse in November 2007 as Mr.
6 Bradford's girlfriend. At the time, Ms. Harper believed Mr. Bradford was separated and had gotten
7 divorced. (Tr. at p. 146)

8 **Analysis**

9 65. Pursuant to Article VI § 14 of the Arizona Constitution, the Superior Court shall have
10 original jurisdiction of matters related to divorce and for annulment of marriage.

11 66. Both the Act and the IM Act at A.R.S. §§ 44-2031 (C) and 44-3291(C), respectively,
12 empower the Commission as follows: "The Commission may join the spouse in any action
13 authorized by this chapter to determine the liability of the marital community."

14 67. By these statutes, the Arizona Legislature has provided the Commission with the
15 authority to join the spouse of an alleged violator of the Act or IM Act to determine liability of the
16 marital community in one proceeding. However, on their face, the authority appears to be a
17 discretionary act and not one mandated by law. Additionally, the laws are silent on any
18 apportionment of the liability of the Marital Community and, therefore, this authority must lie with
19 the Superior Court as set forth in the Arizona Constitution.

20 68. Further, since the laws allow for the inclusion of a spouse, he/she is provided with an
21 opportunity for due process so that the issues can be decided in one proceeding without needless
22 duplicitous litigation.

23 69. In the closing brief filed on Respondent Spouse's behalf, it was argued that the marital
24 community did not exist as of the date of the Notice in this proceeding and that it had ceased as of the
25 date of the Decree, March 3, 2008. It was further argued that the Commission did not have the power
26 to name Respondent Spouse in the Notice, and that the Commission was not required to name her in
27 the Notice.

28 70. It was also argued on behalf of Respondent Spouse that A.R.S. § 25-215 only governs

1 the spouses' liability for community and separate debts for spouses who are still married and for
2 debts collected while the spouses remained married, citing *Community Guardian v. Hamlin*, 182
3 Ariz. 627, 630, 898 P2d 1005, 1008 (App. 1995) ("Community Guardian").

4 71. Respondent Spouse further argued that neither A.R.S. § 44-2031(C) nor A.R.S. § 44-
5 3291(C) authorize the Division to name an ex-spouse to impose liability on the post-divorce separate
6 property of the ex-spouse. It was further argued that since Respondent Spouse and Mr. Bradford had
7 been divorced as of the date of the Notice there was no longer a marital community on which liability
8 could be imposed and that nothing in the language of A.R.S. § 44-2031(C) and A.R.S. § 44-3291(C)
9 suggests or grants the Commission authority to name an ex-spouse or grants the Commission
10 jurisdiction to adjudicate the alleged liability of a former spouse.

11 72. The Division argued that Respondent Spouse has the burden to show by clear and
12 convincing evidence that Mr. Bradford was not acting in furtherance of the marital community and
13 that the marital community did not benefit from his actions.

14 73. While it is not disputed that Respondent Spouse earned some funds during the relevant
15 timeframe, it is also equally clear that she admittedly received \$21,200 directly from the FPS account
16 at Scottrade for which no services were performed and that she received \$34,820 from Mr. Bradford
17 who had transferred funds to her Wells Fargo checking account using invested monies. (Ex. S-9)

18 74. Based on the record, Respondent Spouse failed to produce clear and convincing
19 evidence to rebut the Division's evidence that the marital community was the beneficiary of Mr.
20 Bradford's actions in violation of the Act and IM Act. As illustrated by the Division, the monies
21 received from the FPS investors, \$189,525, represented over 80 percent of the total deposits into Mr.
22 Bradford's Wells Fargo account during the relevant timeframe. Thereafter, Mr. Bradford made
23 numerous disbursements from March 2006 until November 2007, including over 70 percent
24 (approximately \$56,000) of the total funds (\$76,570) which were deposited into Respondent Spouse's
25 checking account during the relevant timeframe.

26 75. Even though Respondent Spouse claimed to have given \$42,000 to Mr. Bradford for
27 the startup of Barracuda, and that the monies coming back to her from Mr. Bradford were believed to
28 be reimbursements, there was no documentation to support her claim of separate property and the

1 funds had become so commingled at that point they had become a part of the community.

2 76. The Division in its brief argued that the marital community existed at all relevant
3 times, pointing out that pursuant to A.R.S. § 25-211, all property acquired by either husband or wife
4 during the marriage is the community property of the husband and wife except for property that is
5 acquired by gift, devise, descent or is acquired after service of a petition for dissolution of marriage,
6 legal separation or annulment if the petition results in a decree of dissolution of marriage, legal
7 separation or annulment. The Division further argued that pursuant to A.R.S. § 25-214(B), that
8 during marriage that both spouses had equal control over community property and equal power to
9 bind the community. Additionally, the Division argued that pursuant to A.R.S. § 25-215(D), either
10 spouse may contract debts and otherwise act for the benefit of the community. Further, there is no
11 evidence that the marital community had ceased to exist even when the spouses were living apart
12 from time to time during their marriage.

13 77. The Division further argued that the Commission, by providing the Respondent
14 Spouse with a hearing to refute her earlier-signed Consent Order which resulted in Decision No.
15 70544, has provided Respondent Spouse with due process and an opportunity to rebut the allegations
16 that Mr. Bradford was acting in furtherance of the marital community as found in Decision No.
17 70545. However, her evidence did not rise to a level which would rebut the Division's evidence that
18 the marital community benefited from Mr. Bradford's activities which have been found in violation
19 of the Act and the IM Act.

20 78. Mr. Bradford was acting to benefit the marital community during the relevant
21 timeframe even if Respondent Spouse was unaware of Mr. Bradford's activities, as was argued here,
22 based on *Ellsworth v. Ellsworth*, 5 Ariz. App. 89, 92, 423 P.2d 364, 367 (Ariz. Ct. App. 1967), as
23 cited by the Division, the marital community is still liable.

24 79. As was stated by the Division in its brief, Respondent Spouse was required to be
25 joined in the Commission's action by the Division to obtain personal jurisdiction over her in order to
26 afford her due process and to insure that the Commission could obtain an enforceable judgment if the
27 evidence presented at hearing supported the allegations in the Notice. The Division further examined
28 the problems resulting from the doctrines of *res judicata* and collateral estoppel to avoid the problem

1 of duplicative litigation. Since the Commission acts in a quasi-judicial manner, matters which could
2 have been litigated during an administrative hearing such as whether the marital community should
3 be held liable could be barred in subsequent proceedings if the matter could have been litigated
4 before the Commission as has been done here.

5 79. The Division concluded its argument by stating that Respondent Spouse has the right
6 to return to Superior Court to obtain relief from the Commission's action by seeking indemnification
7 from Mr. Bradford consistent with the Decree issued on March 3, 2008, that is only binding between
8 Mr. Bradford and Respondent Spouse wherein Mr. Bradford is to pay all debts incurred by him alone
9 related to FPS and Barracuda. It was further argued by the Division that the State of Arizona stands
10 in the place of a third party creditor and it is not bound by the terms of the Decree, and may pursue
11 collection from both spouses jointly since the Decree is only binding between Mr. Bradford and
12 Respondent Spouse, citing *Community Guardian Bank v. Hamlin*, 182 Ariz. 627, 631, 898 P.2d 1005,
13 1009 (Ariz. Ct. App 1995).

14 80. Based on the record, it is established that during the relevant timeframe, Mr. Bradford
15 and Respondent Spouse were married and residents of Arizona. Pursuant to A.R.S. § 25-214(B),
16 "The spouses have equal management, control and disposition rights over their community property
17 and have equal power to bind the community." Additionally, pursuant to A.R.S. § 25-215 (D),
18 "Except as prohibited in § 25-214, either spouse may contract debts and otherwise act for the benefit
19 of the community." The Division argued that during the relevant timeframe, Mr. Bradford violated
20 the Act and the IM Act as found in Decision No. 70545, and therefore the marital community should
21 be found liable.

22 81. Under the circumstances, after considering all of the evidence in this proceeding and
23 reviewing the applicable law, the legislative intent was clear that the legislature intended to give the
24 Commission authority to determine whether the marital community should be held liable in an action
25 for alleged violations of the Act or the IM Act. Further, we find that Respondent Spouse failed to
26 meet her burden of proof to show by clear and convincing evidence that the marital community did
27 not benefit from Mr. Bradford's violations of the Act and the IM Act. Therefore, based on the
28 evidence in this proceeding, we find that the marital community should be held liable for Mr.

1 Bradford's violations of the Act and the IM Act as found in Decision No. 70545. However, we make
2 no finding with respect to the allocation of this marital obligation, leaving that to the Superior Court,
3 the court of competent jurisdiction.⁶ Therefore, we shall vacate Decision No. 70544 and our prior
4 Order in this matter since Ms. White withdrew her earlier consent, but in its place will issue this
5 Decision which shall hold the marital community liable.

6 CONCLUSIONS OF LAW

7 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
8 Arizona Constitution and A.R.S. §§ 44-1801, et seq. and 44-3101, et seq.

9 2. Pursuant to A.A.C. R14-3-112, the Commission may grant rehearings in Securities
10 proceedings.

11 3. Decision No. 70544 should be vacated.

12 4. The marital community should be held liable for the violation of the Act and the IM
13 Act by Mr. Bradford and consistent with the Order of restitution and administrative penalty ordered
14 in Decision No. 70545.

15 ORDER

16 IT IS THEREFORE ORDERED that pursuant to A.A.C. R14-3-112, Decision No. 70544
17 shall be vacated.

18 IT IS FURTHER ORDERED that the marital community of Respondent Richard Bradford
19 and Respondent Spouse shall be held liable for the violations of the Securities Act and the Investment
20 Management Act by Respondent Richard Bradford as it relates to the Orders of restitution of
21 \$1,298,416 and the administrative penalty of \$100,000 consistent with those found in Decision No.
22 70545, with said restitution and administrative penalty to be paid jointly and severally by
23 Respondents.

24 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
25 A.R.S. § 44-2032 and A.R.S. § 44-3292, that said restitution shall be made pursuant to A.A.C. 14-4-
26 308, subject to legal set-offs by the Respondents and confirmed by the Director of Securities, said
27

28 ⁶ We note that *Community Guardian* is not consistent with the facts of this case as here since Respondent Spouse was divorced prior to the Notice and Decision No. 70545.

1 restitution to be made within 60 days of the effective date of this Decision.

2 IT IS FURTHER ORDERED that pursuant to A.R.S. §§ 44-2032 and 44-3292 that any
3 amount of restitution outstanding shall accrue interest at the rate of 10 percent per annum from the
4 date of this Order until paid in full. Payment shall be made to the "State of Arizona" to be placed in
5 an interest-bearing account controlled by the Commission. The Commission shall disburse the funds
6 on a pro-rata basis to investors shown on the records of the Commission. Any restitution funds that
7 the Commission cannot disburse because an investor refuses to accept such payment shall be
8 disbursed on a pro-rata basis to the remaining investors shown on the records of the Commission.
9 Any funds that the Commission determines it is unable to or cannot feasibly disburse shall be
10 transferred to the general fund of the state of Arizona.

11 IT IS FURTHER ORDERED that pursuant to A.R.S. §§ 44-2036 and 44-3296 that any
12 amount outstanding for the administrative penalty shall accrue interest at the rate of 10 percent per
13 annum from the date of this Order until paid in full. Payment shall be made to the "State of Arizona"
14 within 60 days of this Order. The payment obligations for this administrative penalty shall be
15 subordinate to any restitution obligations ordered herein and shall become immediately due and
16 payable only after restitution payments have been paid in full or upon Respondents' default with
17 respect to Respondents' restitution obligations.

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IT IS FURTHER ORDERED that for purposes of this Order, a bankruptcy filing by Respondent Spouse shall be an act of default. If Respondent Spouse does not comply with this Order, any outstanding balance may be deemed in default and shall be immediately due and payable.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

1 SERVICE LIST FOR:

RICHARD BRADFORD AND CINDY BRADFORD
AKA CINDY WHITE

2
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S-20605A-08-0377

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